



# California Fair Political Practices Commission

December 11, 1986

Zoe Lofgren  
Board of Supervisors  
County of Santa Clara  
County Government Center, East Wing  
70 West Hedding Street  
San Jose, CA 95110

Re: Your Request for Advice  
Our File No. A-86-307

Dear Ms. Lofgren:

This is in response to your request for advice regarding your duties as a member of the Santa Clara County Board of Supervisors under the conflict of interest provisions of the Political Reform Act (the "Act").<sup>1/</sup>

## QUESTION

As a member of the Board of Supervisors, you have been appointed to the Board of Directors of a nonprofit community action program agency. You have appointed someone to act as your proxy on that Board of Directors. Is your husband's law firm prohibited from contracting to provide legal services to a subsidiary of the nonprofit community action program agency?

## CONCLUSION

Your husband's law firm is not prohibited by the Political Reform Act from contracting to provide legal services to the subsidiary of the nonprofit community action program agency. However, you should request advice from the County Counsel regarding the effect of Section 1090 on the contract in question.

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<sup>1/</sup> Government Code Sections 81000-91015. All statutory references are to the Government Code unless otherwise indicated. Commission regulations appear at 2 California Administrative Code Section 18000, et seq. All references to regulations are to Title 2, Division 6 of the California Administrative Code.

### FACTS

Your husband, John Marshall Collins, is an attorney with the law firm of Ubhaus & Collins, a professional corporation. Santa Clara Valley Builders ("SCVB"), through its President, Joseph Judge, is considering the possibility of engaging your husband's firm to perform general legal services related to the review of SCVB's incorporation and organization documents and the provision of general legal advice to SCVB.

SCVB is a recently organized for-profit corporation. All of the stock in SCVB is owned by Economic and Social Opportunities, Inc. ("ESO"), a nonprofit community action program agency. ESO has certain designated positions on its Board of Directors; one of which is a representative of the Santa Clara County Board of Supervisors. You are that representative, but you have never served on the board and have instead named Joe Head as your "proxy." Mr. Head also sits on the Board of Directors of SCVB.

It is your husband's understanding that the decision as to whether to obtain counsel and if so, whom, will be made by SCVB management rather than its board of directors. Your husband believes that the reason his firm's services are being sought is because of Joe Judge's past opportunity to observe your husband as an attorney when your husband worked for another company.

### ANALYSIS

Section 87100 prohibits a public official from making, participating in, or attempting to use his official position to influence a governmental decision in which he knows or has reason to know he has a financial interest. A public official has a financial interest in a governmental decision if it is reasonably foreseeable that the decision will have a material financial effect, distinguishable from its effect on the public generally, on the official or a member of his or her immediate family or on:

(a) Any business entity in which the public official has a direct or indirect investment worth one thousand dollars (\$1,000) or more.

(c) Any source of income, other than gifts and other than loans by a commercial lending institution in the regular course of business on terms available to the public without regard to official status, aggregating two hundred fifty dollars (\$250) or more in value provided to, received by or promised to the

Zoe Lofgren  
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public official within 12 months prior to the time when the decision is made.

Section 87103(a) and (c).

While you have not provided us with specific facts on this topic, you presumably have a financial interest in your husband's law firm under either or both subsections (a) and (c) of Section 87103. Accordingly, you may not participate in any governmental decision which will have a material financial effect on your husband's law firm. The Act does not prohibit the making of contracts where a conflict of interest exists, it merely requires an official to disqualify herself or himself from participating in certain governmental decisions.<sup>2/</sup> Thus, it is clear that the Act does not prohibit your husband's firm from contracting with SCVB to provide legal services. However, we must still analyze whether you are disqualified from participating in any decision related to the contract.

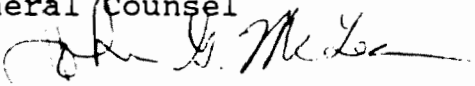
In the present situation, you appointed Joe Head to act as your proxy on the ESO Board of Directors. This clearly was a governmental decision. Regulation 18700(b)(2). However, so long as you do not utilize your appointment power over Mr. Head to dictate his actions on the private entities' boards (ESO and SCVB), then no "governmental decision" is involved in the decision as to whether to hire your husband's law firm. Benjamin Advice Letter (No. A-86-148) (copy enclosed). Accordingly, there is no governmental decision from which you must disqualify.

We also recommend that you contact the County Counsel's office regarding the effect of Section 1090 on the contracts in question. Section 1090 is not within the Commission's jurisdiction.

If you should have any questions, please contact me at (916) 322-5901.

Sincerely,

Diane M. Griffiths  
General Counsel

  
By: John G. McLean  
Counsel, Legal Division

DMG:JGM:plh  
cc: Don Clark

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<sup>2/</sup> On the other hand, Section 1090 prohibits public officials from making contracts in which they have a financial interest.

**Ubhaus & Collins**  
A Professional Corporation

John Marshall Collins  
Frank R. Ubhaus

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Seventh Floor  
40 South Market Street  
San Jose, Ca 95113

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Karl D. Chandler  
William A. Van Roo  
Charles F. Collins

October 6, 1986

(408) 287-9001

Zoe Lofgren  
County Government Center  
70 West Hedding Street  
Tenth Floor  
San Jose, CA 95110

Dear Zoe:

Santa Clara Valley Builders, through its President, Joseph Judge, is considering the possibility of engaging my firm, Ubhaus & Collins, P.C., to perform general legal services related to the review of SCVB's incorporation and organization documents and the provision of general legal advice to SCVB.

SCVB is a recently organized for-profit corporation. All of the stock in SCVB is owned by Economic and Social Opportunities, Inc. ("ESO") which capitalized SCVB with \$100,000.

SCVB has, as I understand it, been organized as a profit center for ESO and capitalized with the funds earned by ESO in its performance of services as a PG&E subcontractor in the HELP program, insulating houses. It is not anticipated that SCVB will seek or obtain any government grants.

ESO, acting through its management, votes the SCVB stock to elect a Board of Directors of SCVB. Mr. Joe Judge is the President, Chief Executive Officer, and Chairman of the Board of SCVB.

As you know, I believe you are technically a member of the ESO Board of Directors, where you are authorized to and do act through a proxy, presently Mr. Joe Head. Obviously, the ESO Board of Directors has approved the transactions leading to setting up SCVB, and it would be reasonable to assume that Mr. Head has participated in those decisions. However, such decisions would not have included any decision whatsoever relating to the hiring of counsel by SCVB.

I understand that Mr. Head also sits on the Board of SCVB as an elected member. As I further understand it, however, there is no provision in the SCVB organizational documents which requires SCVB directors to be drawn from the ESO Board of

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Directors, and I believe that Mr. Head is elected in his own right and is not sitting as your proxy in any way, shape or form on the SCVB Board.

As I understand it, the decision as to whether to obtain counsel and if so, whom, will be made by SCVB Management rather than its Board of Directors.

It is clear to me that, in truth and fact, our services are being sought because of Joe Judge's past opportunity to observe me as an attorney when he worked for Unison Corporation. Your role as a member of the Board of Supervisors or as a proxy represented member of the ESO Board has played no actual role in the matter.

The purpose of this letter is to ask you to explore the matter with County legal advisors and/or the FPPC to ascertain whether there is, once again, some weird technicality which prevents this relationship from being consummated.

I appreciate your looking into this and would ask that the investigation be prompt as SCVB needs legal services now.

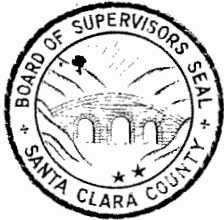
Very truly yours,

UBHAUS & COLLINS



JOHN MARSHALL COLLINS

JMC/ct  
week/lofgren ltr



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**BOARD OF SUPERVISORS**  
**COUNTY OF SANTA CLARA**  
COUNTY GOVERNMENT CENTER, EAST WING  
70 WEST HEDDING ST. / SAN JOSE, CA 95110 / (408) 299-2323

**ZOE LOFGREN**  
SUPERVISOR SECOND DISTRICT

October 16, 1986

Mr. Robert Leidigh  
Legal Division  
Fair Political Practices Commission  
1100 K Street  
Sacramento, CA 95184


Dear Mr. Leidigh:

Enclosed is a letter I just received from my spouse inquiring as to whether he may accept employment. I do not know the answers to the questions he has posed and hope that you can give me, and he, advice in this matter.

I hope that I can hear from you soon as I am sure that the Corporation desiring to retain my spouse's services will want to obtain legal assistance in the near future.

With kindest regards.

Sincerely,

  
Zoe Lofgren  
Supervisor, District 2